IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPEAL NO. 40 OF 2001.

Bandu @ Bandya Birasing Rajput ..Appellants.

vs.

The State of Maharashtra ..Respondent.

None for the appellant.
Shri A. S.Shitole, A.P.P. for the State.

CORAM: V.M.KANADE,J.
DATED: 7-3-2005.

ORAL JUDGMENT:

1. Heard learned A.P.P. for the State.

2. The appellant has filed this appeal challenging the judgment and order passed by the Additional Sessions Judge, Gr.Bombay, in Sessions case No. 168 of 1986. The trial Court, by the said judgment and order dated 16.10.2000 was pleased to convict the appellant-accused punishable under section 342 of the Indian Penal Code and was sentenced to suffer R.I. for 1 year. He is also convicted for the offence punishable under section 376 (f) of the I.P.C. and is sentenced to undergo R.I. for 10 years and to pay a fine of Rs. 1,000/-, in default, to suffer further R.I. for 3 months.

3. Learned A.P.P. for the State has taken me

through the judgment and order of the trial Court as also the evidence adduced by the prosecution.

4. The prosecution case is that on 13.11.1985 the accused who was residing in Rahul Nagar Hutment committed rape on one Maya, who was 4 years old. Accused was arrested and prosecutrix was taken to the hospital of Dr. Tekchandani where she was given first aid and thereafter she was taken to Mulund General Hospital. It was observed by the Doctor that there was second degree perineal tear and hymen was torn. A complaint was lodged against the accused. The accused was thereafter arrested and charge- sheet was filed against him. The trial Court framed charge against the accused to which accused pleaded not guilty. The trial Court convicted the accused and sentenced him to suffer R.I. for 10 years.

5. The prosecution examined 2 eye-witnesses, P.W.1 and P.W.2, who had seen the actual act of rape. P.W. 1 is the mother of the prosecutrix. The ocular evidence is corroborated by the medical evidence and P.W.5 Dr.Ashwinkumar Nagwani who had examined the prosecutrix at about 8.45 p.m. i.e. 4 hours after the incident, has stated that the prosecutrix was admitted and operation had to be performed by giving general anaesthesia and injuries were stitched during operation. In my view, the prosecution has proved

beyond reasonable doubt that the appellant-accused has committed an offence punishable under section 376 (f) read with section 342 of the Indian Penal Code.

6. The trial Court has given minimum punishment as provided under section 376 (f), in view of the fact that the prosecutrix was below 10 years of age. The trial Court has observed while considering the quantum of sentence that incident had taken place in the year 1985 and the case had come up for trial almost after 15 years. By that time, accused had married and had 4 children. The trial Court, however, considering the fact that the accused had committed rape on a minor girl, awarded the minimum sentence.

7. In my view, though conviction is liable to be confirmed, this is a fit case where sentence be reduced from 10 years to 8 years, considering the fact that the accused had waited for 15 years and thereafter he was tried by the Sessions Court. The accused was arrested after he was convicted by the trial Court and is in jail since then i.e. from 16.10.2000. His application for bail was rejected. Appellant has already undergone more than 4 1/2 years of sentence. Considering all these facts, the sentence is reduced from R.I. for 10 years to R.I. for 8 years. Appeal is allowed in the above terms.